



**The Comptroller General
of the United States**

Washington, D.C. 20548

Wolcott - PL

Decision

Matter of: N.V. Heathorn, Inc.

File: B-227307

Date: June 23, 1987

DIGEST

Protest is dismissed as untimely where protester made prior oral complaint but did not file written protest with contracting agency, and where protest to our Office was filed more than 10 working days after the basis for the protest was known.

DECISION

N.V. Heathorn, Inc., protests the Department of the Interior's award of contract No. 14-08-0001-22132 to Western Allied Services Company pursuant to invitation for bids (IFB) No. 1636. Heathorn contends that the agency improperly rejected Heathorn's bid for failing to acknowledge receipt of solicitation amendment No. 1. We dismiss the protest without obtaining an agency report since it is clear on its face that the protest was not timely filed. 4 C.F.R. § 21.3(f) (1986).

In its protest, Heathorn states that on May 6, 1987, it received notification from the agency that it had not been awarded the contract because it failed to acknowledge receipt of the solicitation amendment. On May 7, Heathorn telephoned the agency, arguing that it had not received the amendment and advising the agency that it would protest the award. Heathorn's letter of protest, dated May 18, 1987, was sent to our Office via regular mail and received May 26.

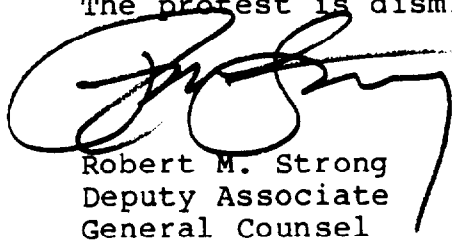
Our Bid Protest Regulations require that a protest be filed either with the contracting agency or with this Office not later than 10 working days after the basis of the protest is

039293

known or should have been known. 4 C.F.R. § 21.2(a)(2). If an initial protest was timely filed with the contracting agency, a subsequent protest to this Office will be considered timely if it is filed within 10 working days after the protester is given actual or constructive notice of initial adverse agency action. 4 C.F.R. § 2.2(a)(3). However, oral protests to contracting agencies are no longer recognized under the Federal Acquisition Regulation, 48 C.F.R. § 33.101 (1986); K-II Construction, Inc., 65 Comp. Gen. 422 (1986), 86-1 C.P.D. ¶ 270. Accordingly, Heathorn's oral communication with the agency on May 7 did not constitute a protest and, therefore, did not extend the deadline for filing a protest with our Office.

In its protest, Heathorn acknowledges that it knew the basis for its protest on May 6. Therefore, in order to have been timely filed under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), the protest had to have been received in our Office no later than May 20. Since we did not receive it until May 26, it is untimely.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel